

Protest of	)	
	)	Date: March 24, 1988
FREDERICK MANUFACTURING CO., INC.	)	
	)	
Solicitation No. 104230-87-B-0039	)	P.S. Protest No. 88-01

### DECISION

Frederick Manufacturing Co., Inc. (Frederick) protests the award of a contract to United Engineers, Inc. (United) under Solicitation No. 104230-87-B-0039 for design and development engineering services concerning bulk mail standardization.<sup>1/</sup>

The solicitation was issued by the Office of Procurement, Headquarters on April 6, 1987, with an offer due date, as amended, of May 12. The solicitation described the evaluation factors to be considered. Technical evaluation, composed equally of facilities and shop capabilities and personnel qualification, constitutes 70% of the score given to each proposal. The remaining 30% is predicated upon the price proposal. The final evaluation score is the sum of the technical and the price score.

The basis for its protest is that the alleged award to United is contrary to the terms of the solicitation and can only be the result of favoritism. Frederick also asserts that United's original offer is not "responsive"<sup>1/</sup> because United did not have the requisite employees or facilities in the Washington, D.C. area. Finally, Frederick notes the long period since proposal submission and supplementation, and argues that best and final offers should have been requested. It states that it had told the contracting officer that it could reduce its prices but that its offer to do so was ignored.

<sup>1/</sup>The contracting officer selected United for award and issued a contract number to it, but has not actually awarded the contract. According to the contracting officer, this was done on the grounds that performance under the contract was not due to commence until March 1, 1988, and that United would be awarded the contract.

<sup>2/</sup>The protester and the contracting officer use terms, such as "responsive," which refer solely to advertised procurements. Since this is a negotiated procurement, these terms of art are inapplicable.

The contracting officer states the results of the evaluation, as follows:

#### TECHNICAL EVALUATION

United 70 points (based upon a raw score of 82.5 out of 100)

Frederick 59 points (based upon a raw score of 70 out of 100)

#### PRICE EVALUATION

United 30 points (\$965,070.00)

Frederick 21 points (\$1,256,460.00)

#### TOTAL EVALUATION

United 100 Points          Frederick 80 points

As to Frederick's allegation of favoritism, the contracting officer notes that selection was made on the basis of the evaluation factors. The contracting officer states in his report that United identified the requisite employees questioned by Frederick; this was confirmed on two occasions -- by letter to United dated June 17 and at discussions concerning the audit held on December 16. Further, he states that the solicitation does not require that the offeror have facilities in the Washington, D.C. area.

Concerning Frederick's allegation concerning delay, the contracting officer states that the solicitation provides that "award may be made without discussion of the proposal and that proposals should therefore be submitted initially on the most favorable terms, from a technical and price standpoint." Moreover, the solicitation further provides that "no award will be made until proposed rates are confirmed by a rate review and analysis or by audit." An audit report was sent to the contracting officer on October 20; thereafter, discussions concerning the audit were conducted and completed on December 16.

Frederick's comments on the contracting officer's report are substantially a restatement of the allegations of its protest. Frederick asserts that United's proposal in several areas contains elements which render its proposal materially deficient. Frederick claims that, according to Postal Contracting Manual (PCM) 3-805.1, written or oral discussions are required to be conducted with all responsible offerors who submitted proposals within the competitive range. Moreover, Frederick asserts that the terms of the solicitation have been changed if new engineers can be introduced before any task is

awarded, with the approval of the contracting officer. United has submitted comments which indicate that all except one of the engineers originally specified in their proposal will perform on this contract.

We have previously stated at length our limited review of evaluations in a negotiated procurement:

[T]his office will not substitute its judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulation. H & B Telephone Systems, [P.S. Protest No. 83-61, February 6, 1984]; Amdahl Corporation, P.S. Protest No. 81-34, September 29, 1981. The determination of the relative merits of technical proposals is the responsibility of the contracting officer. This office does not resolve disputes on the scoring of technical proposals. Computer Systems & Resources, Inc., [P.S. Protest No. 86-4, March 27, 1986], citing, Mid-Atlantic Forestry Services, Inc., Comp. Gen. Dec. B-217334, September 9, 1985, 85-2 CPD & 279. Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986; see also Service America Corporation, P.S. Protest No. 86-96, January 14, 1987. The record shows only allegations by Frederick of "favoritism" in making the selection. Frederick does not demonstrate a basis for its assertion of favoritism nor does it show that the evaluation of protester's proposal was arbitrary or unreasonable. Cf. Book Fare, Inc., P.S. Protest No. 80-29, July 3, 1980; Bancroft Investors, Comp. Gen. Dec. B-219915, November 18, 1985, 85-2 CPD & 564. As such, there is no reason to disturb the evaluation.

Selection of United would not be contrary to the terms of the solicitation; the original offer of United conformed to the solicitation in that specific employees were identified. Subsequently, on at least two occasions, noted by the contracting officer, this was further confirmed with United. The argument that Frederick advances in its comments on the contracting officer's report that the Postal Service changed the terms of the solicitation is not supported by the record. The portion of the contracting officer's report to which Frederick refers states that United is responsive to the solicitation, in that United identified employees who would be available for work on the first task. The contracting officer thereupon notes that any individual assigned to work under the solicitation must meet the requirement of the Statement of Work and be approved by the contracting officer. This is not a change in the solicitation nor contrary to the solicitation requirement.

With reference to Frederick's assertions that United does not have facilities in the Washington, D.C. area, there is no such requirement in the solicitation. The fact that Frederick may have facilities in the Washington, D.C. area is therefore not relevant.

Frederick claims that its proposal is out of date, due to the passage of approximately eight months between the time of initial proposals and the present. Frederick asserts that it could have, in January, 1988, offered the Postal Service better rates under the best and final offer procedure. Its argument is without merit on several grounds. First, the provisions of the solicitation permit that "award may be made without discussion" and that it should submit its initial proposal on the "most favorable terms." See H & B Telephone Systems, supra. The protester should have known that it had to present its most advantageous offer in its initial proposal, or risk having no opportunity to amend its proposal. Yourdon, Inc., Comp. Gen. Dec. B-222416, July 3, 1986, 86-2 CPD & 30; GM Industries, Inc., Comp. Gen. Dec. B-218331, April 15, 1985, 85-1 CPD & 431. Contrary to the assertions of Frederick, there is no mandate that negotiations be conducted with the offerors. See PCM 3-805.1.

Second, although Frederick states that it could offer "better rates" had it been provided with the opportunity to submit a best and final offer, there is nothing in the record suggesting that Frederick would have proposed a significant price reduction of the magnitude necessary for it to be awarded the contract.<sup>1/</sup> As such, we cannot conclude that the contracting officer's determination not to engage in negotiations or to request best and final offers was unreasonable, because the competition established that acceptance of United's offer would be the most advantageous to the Postal Service. Cf. Glar-Ban, Comp. Gen. Dec. B-225709, April 14, 1987, 87-1 CPD & 406.

Third, there is no indication that the protester was prejudiced by the pace and duration of the evaluation and selection decision process. The offers were reviewed, and the evaluation of United, combining technical rating and price offered, was 100 points, while Frederick's was 80 points. Although Frederick claims that its proposal is out of date on account of the delay between the time of initial proposals and its January 15, 1988 protest, the assertion is beside the point because United's proposal was evaluated higher than Frederick's and that the contracting officer was correct in determining to whom award could be made, without negotiation.

In addition, Frederick could have unilaterally offered a price reduction, which could have been evaluated under PCM 3-106.5 and paragraph (d) (iii) of the clause entitled Late Offers, Modifications, and Withdrawals (June 1981), which allows late proposals to be considered when they contain an overriding cost or technical benefit to the Postal Service and such consideration would be in the best interest of the Postal Service.

We are unable to conclude that Frederick has proven any irregularity sufficient to sustain the protest.<sup>1/</sup>

<sup>3/</sup>We note that, even if Frederick had lowered its price by 30% (\$300,000), it still would not have received award because United received a significantly higher technical score.

<sup>4/</sup>We do not condone the contracting officer's delay and other actions in the seven months between the submission of proposals and the protest. A better procedure may well have been to issue a letter

The protest is denied.

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**[checked against original JLS 2/22/93]**

contract to United and negotiate final prices after a complete audit. We hold only that these actions do not affect the validity of the evaluation process in this case.